

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation into the Gas Market Activities of Southern California Gas Company, San Diego Gas and Electric, Southwest Gas, Pacific Gas and Electric, and Southern California Edison and their impact on the Gas Price Spikes experienced at the California Border from March 2000 through May 2001.

Investigation 02-11-040
(Filed November 21, 2002)

Order Instituting Investigation whether San Diego Gas & Electric Company, Southern California Gas Company and their holding company, Sempra Energy, respondents, have complied with relevant statutes and Commission decisions, pertaining to respondents' holding company systems and affiliate activities.

Investigation 03-02-033
(Filed February 27, 2003)

**SCOPING MEMO FOR PHASE I OF I.02-11-040 AND
RULING OF ASSIGNED COMMISSIONER**

Summary

Pursuant to Article 2.5 of the Commission Rules of Practice and Procedure,¹ and following a prehearing conference (PHC) held on January 9, 2003, this ruling sets forth the scope and procedural schedule of Phase I of

¹ Unless otherwise indicated, all citations to sections refer to the Public Utilities Code and citations to rules refer to the Commission Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

Investigation (I.) 02-11-040 and designates the principal hearing officer of the proceeding. It also addresses discovery, service, and other procedural issues for the proceeding.

The issue of whether consolidation of I.02-11-040 and I.03-02-033 should affect the schedule in Phase I of I.02-11-040 may be discussed at the PHC to be held pursuant to the Order Instituting Investigation (OII) initiating I.03-02-033. Unless determined otherwise, Phase I should proceed as discussed at the January 9, 2003, PHC and confirmed in this scoping memo.

Background

On November 21, 2002, the California Public Utilities Commission (Commission) issued an OII in I.02-11-040, to examine the past conduct of the respondents with regard to gas price spikes at the California border from March 2000 through May 2001. The OII provided that the investigation would proceed in two phases. The Commission named Southern California Gas Company (SoCalGas) and San Diego Gas & Electric Company (SDG&E) as respondents in Phase I. Respondents in Phase II are Southwest Gas, Pacific Gas and Electric Company (PG&E), and Southern California Edison Company (SCE).

The OII in I.02-11-040 provided the basic framework for both Phase I and Phase II of the investigation and required that, in each of the two phases, respondents present evidence and testimony regarding gas market activity that may have affected gas prices during the period March 2000 through May 2001. The OII included a preliminary scoping memo for the proceeding, required that a PHC be held within 60 days, and specified that Phase II will commence at a time to be set in a future Commission ruling.

On February 27, 2003, the Commission issued an OII initiating I.03-02-033 to evaluate the business activities of the companies named as respondents in I.03-02-033--SDG&E, SoCalGas, and their holding company, Sempra Energy (Sempra)--to ensure they have complied with relevant statutes and Commission decisions in the management, oversight, and operations of their companies. The Commission consolidated I.03-02-033 with I.02-11-040.

Categorization

In the OII initiating I.02-11-040, the Commission categorized the investigation as ratesetting and specified that there may be an adjudicatory phase if the investigation reveals that statutory laws, or rules or orders of the Commission were violated. (Rule 6(c)(1); OII, page 13.) Persons had ten days to appeal. (Rule 6.4(a).) No appeals were filed, so the categorization of this proceeding as ratesetting is final. Ex parte communications in this investigation proceeding are subject to § 1701.3(c) and Rule 7(c).

January 9, 2003 PHC

A PHC was held in I.02-11-040 on January 9, 2003. SoCalGas and SDG&E filed a Joint PHC Statement on behalf of themselves, the Office of Ratepayer Advocates, and The Utility Reform Network. SCE filed a separate PHC Statement. At the PHC, appearances were taken and a service list for the proceeding was established. The scope and schedule of Phase I and related procedural matters were discussed.

Scoping Memo for Phase I

The preliminary scoping memo in the OII initiating I.02-11-040 laid out the issues that the Commission identified to be addressed in the gas price spike investigation. In their Joint PHC Statement, SoCalGas and SDG&E stated that the submitting parties have not identified any additional substantive issues they

believe should be within the scope of the proceeding. In its PHC Statement, SCE agreed with the scope of the proceeding as set forth in the OII, but proposed a list of specific sub-issues to be included within the scope of Phase I. At the PHC, counsel for SoCalGas and SDG&E agreed that these sub-issues would be addressed in Phase I.

The scope of Phase I shall include all issues identified in the OII and shall encompass the sub-issues identified by SCE. An additional area of inquiry discussed at the PHC regarding the effect of activities in the electric marketplace on California border gas prices shall also be included as a sub-issue of Issue 3. Several revisions and additions suggested by Staff are also incorporated. The scope of Phase I shall include the following issues and shall encompass, but not be limited to, the identified sub-issues:

1. Did SoCalGas and/or SDG&E play a role in causing the increase in California border prices between March 2000 and May 2001 (the subject period)?
 - a. Did loans by SoCalGas' Gas Acquisition Group to non-core customers with repayment due in the winter of 2000/2001 affect border prices during the subject period?
 - b. Did the management of storage (injection/withdrawal) and/or associated storage services provided by SoCalGas' Gas Acquisition Group and/or SDG&E affect border prices during the subject period?
 - c. Did SoCalGas and/or SDG&E report false trades and/or false prices to the trade press? Did any such false reporting to the trade press affect border prices during the subject period?
 - d. Did SoCalGas and /or SDG&E selectively report trades to the trade press in a way that would enhance any financial position they had in the market?

- e. Did the procurement behavior of SoCalGas and/or SDG&E affect border prices during the subject period?
 - f. Were hedging activities by SoCalGas' Gas Acquisition Group during the subject period influenced by the group's loaning behavior?
 - g. Did SoCalGas' Gas Acquisition Group benefit from higher border prices due to gas sales it made to third parties?
 - h. Did any of SoCalGas' short-term or long-term capacity releases arranged during the subject period, including releases to entities serving markets outside of California, contribute to the high border prices or provide evidence of an intent to tighten interstate pipeline capacity to California?
2. Did any of SoCalGas and SDG&E's affiliates or their parent company, Sempra, play a role in causing the increase in border prices? Did concerns about affiliates or the parent's financial position cause SoCalGas and/or SDG&E to take actions that may have increased gas costs?
- a. Did any activities of Sempra's Energy Risk Management Department create an incentive for SoCalGas and/or SDG&E to act in a manner that affected border prices during the subject period?
 - b. Did Sempra Energy Trading (SET) take positions in the electric market that allowed it or any of its affiliates to unjustifiably benefit from increased border prices during the subject period?
 - c. Did SET become aware of SoCalGas' gas hedging activities during the subject period? If so, did SET use that knowledge to its benefit?
 - d. Did SET report false trades and/or false prices to the trade press? Did any such false reporting to the trade press affect border prices during the subject period?
 - e. Did SoCalGas, SDG&E, and SET share information?

3. What were the primary factors that caused the increase in border prices? In addition to the increase in gas costs caused by El Paso's actions, what other factors may have caused gas prices to increase to such high levels? Did recently acknowledged inaccurate reporting of gas price information to energy trade publications by energy trading companies have any effect on published index prices?
 - a. Did El Paso's actions, specifically its withholding behavior, cause a change in the demand for the services (third party sales, loans, and storage) of SoCalGas' Gas Acquisition Group and Gas Operations Department during the subject period?
 - b. Did any of the rules of SoCalGas' Gas Operations Department, e.g., imbalance rules and related penalties, affect border prices during the subject period?
 - c. Did activities in the electric marketplace and electricity price increases affect border prices during the subject period?
4. Did SoCalGas' and SDG&E's gas cost incentive mechanisms (GCIMs) create perverse incentives to increase or otherwise manipulate natural gas prices at the California border? Did SoCalGas' Year 7 and Year 8 operations under the GCIM enable it to exercise market power and/or anticompetitive behavior? If so, should these incentive mechanisms be modified or eliminated to prevent such activity?

For each identified activity or factor, parties should address whether and, if so, how it occurred and with what effect.

Parties should be aware of the March 2003 Federal Energy Regulatory Commission (FERC) Final Report on Price Manipulation in Western Markets and the discovery documents that FERC has released in conjunction with its investigation. These documents can be accessed via the following web sites:

<http://www.ferc.gov/western.htm>

<http://www.ferc.gov/Electric/bulkpower/PA02-2/release.htm>

In their testimony, Phase I respondents shall, and other parties may, address the extent to which any information in the FERC report or the underlying discovery documents is relevant to our investigation.

Procedural Schedule for Phase I

The schedule developed at the PHC is adopted. Discovery restrictions are also established, as indicated in the following schedule:

| | |
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| Initial testimony by SoCalGas and SDG&E | June 11, 2003 |
| Initial testimony by all other parties | August 27, 2003 |
| Moratorium on new discovery requests | September 18, 2003 through October 15, 2003 |
| Concurrent rebuttal testimony by all parties | October 15, 2003 |
| Deadline for discovery requests | October 22, 2003 |
| Hearings | November 3 through November 7, 2003 |
| Opening briefs | December 5, 2003 |
| Reply briefs and submission of Phase I | January 6, 2004 |

Pursuant to Rule 8(d), parties requesting final oral argument before the Commission should include that request in their concurrent opening briefs.

The assigned administrative law judge (ALJ) may adjust the schedule as necessary during the course of the proceeding. In Section 1 of Senate Bill 960 (Ch.96-0856), the Legislature urges the Commission to resolve the issues within the scope of a proceeding categorized as ratesetting, such as this, within 18 months. Consistent with that guidance, my goal is that a Phase I decision be issued by May 21, 2004.

Principal Hearing Officer

In accordance with Rule 5(k) and (l), ALJ Charlotte F. TerKeurst is designated as the principal hearing officer for this proceeding.

Discovery

As indicated above, no new discovery requests will be allowed in Phase I between September 18 and October 15, 2003, or after October 22, 2003. Parties shall provide responses within 10 days to all discovery requests, including any discovery requests pending at the beginning of the discovery moratorium, except that parties shall provide responses no later than October 29, 2003, to all discovery requests submitted between October 20 and October 22, 2003.

Parties shall provide a copy of each discovery request to all other parties at the time the request is sent. Parties shall provide a copy of their discovery responses to each party that makes a request for that specific response. Electronic copies of discovery requests and discovery request responses are sufficient unless the receiving party requests a paper copy.

The parties shall attempt to resolve any discovery disputes with a good faith meet and confer, which may occur telephonically if that is more convenient than an in-person meeting. If that attempt does not resolve the dispute, the parties are to e-mail the assigned ALJ regarding the dispute. The assigned ALJ may schedule a conference call, ask for written motions, refer the discovery dispute to the Law and Motion ALJ, or take other steps as deemed appropriate. The assigned ALJ's e-mail address is cft@cpuc.ca.gov.

Service of Documents

The official service list for I.02-11-040 is on the Commission's web page. Parties should confirm that the information on the service list and the comma-

delimited file is correct, and serve notice of any errors on the Commission's Process Office, the service list, and the ALJ.

On March 17, 2003, an ALJ ruling established a temporary service list for consolidated I.02-11-040/I.03-02-033, comprised of the service lists for I.02-11-040, Application (A.) 94-11-013, A.96-10-038, and Rulemaking 97-04-011/I.97-04-012. Each of these service lists is on the Commission's web site. At this time, all documents should be served on the offices of all five Commissioners, the ALJ, and all parties on the temporary service list. During the PHC required by the OII initiating I.03-02-033, an updated service list for I.02-11-040/I.03-02-033 may be developed.

Parties shall serve, but not file, initial testimony and rebuttal testimony.

Service of testimony and pleadings by electronic means is encouraged, pursuant to Rule 2.3(b). The use of PDF format is also encouraged, to avoid confusion regarding pagination. Any party who wishes to receive served documents in a hard copy may make that request by serving a notice to that effect. All parties shall honor such requests. Parties shall e-mail courtesy copies of all served documents to the entire service list, including those appearing on the list as "Information Only."

Hard copies, in addition to electronic copies if made available, shall be served on the Assigned Commissioner, the ALJ, and Energy Division representatives.

Other Procedural Issues

The parties should comply with the Procedural Ground Rules set forth in Appendix A hereto.

Therefore, **IT IS RULED** that:

1. Ex parte communications in this proceeding are subject to Pub. Util. Code § 1701.3(c), and Rule 7(c).
2. The scope of Phase I of this proceeding is as set forth herein.
3. The schedule for Phase I of this proceeding is as set forth herein.
4. A party may request final oral argument as set forth herein.
5. The principal hearing officer in this proceeding pursuant to Rule 5(k) and (l) is Administrative Law Judge Charlotte F. TerKeurst.
6. Parties shall follow the discovery, service, and service list rules as set forth herein.
7. Parties shall comply with the Procedural Ground Rules set forth in Appendix A hereto.

Dated April 16, 2003, at San Francisco, California.

/s/ LORETTA M. LYNCH

Loretta M. Lynch
Assigned Commissioner

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PROCEDURAL GROUND RULES

Exhibit Format

See Rule 70 of the Rules of Practice and Procedure. Parties often fail to include a blank space two inches high by four inches wide to accommodate the ALJ's exhibit stamp. If necessary, add a cover sheet to the front of the exhibit. The common practice of pre-printing the docket number, a blank line for the exhibit number, and witness name(s) is not a substitute for the required two by four inch blank space to accommodate the exhibit stamp. If the docket number and related information is pre-printed, it should be below or to the left of the required two by four inch blank space.

Exhibits should be bound on the left side or upper left-hand corner. Rubber bands and paper clips are unacceptable.

Excerpts from lengthy documents should include the title page and, if necessary for context, the table of contents of the document.

Exhibit Copies

See Rule 71. The original and one copy of each exhibit shall be furnished to the presiding officer and a copy shall be furnished to the reporter. The copy furnished to the presiding officer may be the mailed copy. Except for exhibits that are served prior to the hearing, parties are responsible for having sufficient copies available in the hearing room for each party in attendance.

Cross-Examination Exhibits

Requiring witnesses to review new or unfamiliar documents during the hearing can waste hearing time. The general rule is that a party who intends to

introduce an exhibit in the course of cross-examination should provide a copy to the witness and the witness' counsel before the witness takes the stand on the

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day the exhibit is to be introduced. Documents in excess of two pages should be provided the day before. Generally, parties need not provide advance copies of documents to be used for impeachment or to obtain the witness' spontaneous reaction.

Corrections

Generally, corrections to an exhibit should be made in advance and not orally from the witness stand. If revised exhibit pages are prepared, the original text to be deleted should be lined out with the substitute or added text shown above or inserted. If a separate correction exhibit describing the needed corrections is prepared, it should indicate both deletions and insertions. Revised exhibit pages or separate correction exhibits should indicate the revision date.

Hearing Hours

Hearings will generally run from 9:00 a.m. to 12:00 a.m. with one morning break and from 1:30 p.m. to 3:30 p.m. with one afternoon break. On Mondays, hearings will begin at 10:00 a.m. unless scheduled otherwise. If hearings appear to be on schedule, hearings may run from 9:00 a.m. to 1:00 p.m. on Fridays.

Cross Examination Time

Parties are placed on notice that it may be necessary to limit and allocate cross-examination time as well as time for redirect and recross-examination.

Rebuttal Testimony

Prepared rebuttal testimony should include appropriate references to the testimony being rebutted. It is inappropriate, and potential grounds for striking, for any party to hold back direct presentations for introduction in rebuttal testimony.

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Court Reporters

Common courtesy should always be extended to the reporters. Counsel should wait for witnesses to finish their answers, and witnesses should likewise wait for the whole question to be asked before answering. Counsel shall refrain from simultaneous arguments on motions and objections. Conversations at the counsel table or in the audience can be distracting to the reporter and other participants. Such distractions should be avoided.

(END OF APPENDIX A)

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Scoping Memo for Phase I of I.02-11-040 and Ruling of Assigned Commissioner on all parties of record in this proceeding or their attorneys of record.

Dated April 16, 2003, at San Francisco, California.

/s/ JEANNIE CHANG

Jeannie Chang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.

I.02-11-040, I.03-02-033 LYN/CFT/jyc